

EXHIBIT D

1 Robert A. Mittelstaedt (SBN 060359)
Jason McDonell (SBN 115084)
2 Elaine Wallace (SBN 197882)
JONES DAY
3 San Francisco Office
555 California Street, 26th Floor
4 San Francisco, CA 94104
Telephone: (415) 626-3939
5 Facsimile: (415) 875-5700
ramittelstaedt@jonesday.com
6 jmcdonell@jonesday.com
ewallace@jonesday.com
7

8 Tharan Gregory Lanier (SBN 138784)
Jane L. Froyd (SBN 220776)
JONES DAY
9 Silicon Valley Office
1755 Embarcadero Road
10 Palo Alto, CA 94303
Telephone: (650) 739-3939
11 Facsimile: (650) 739-3900
tglanier@jonesday.com
12 jfroyd@jonesday.com

13 Scott W. Cowan (Admitted *Pro Hac Vice*)
Joshua L. Fuchs (Admitted *Pro Hac Vice*)
14 JONES DAY
717 Texas, Suite 3300
15 Houston, TX 77002
Telephone: (832) 239-3939
16 Facsimile: (832) 239-3600
swcowan@jonesday.com
17 jlfuchs@jonesday.com

18 Attorneys for Defendants
SAP AG, SAP AMERICA, INC., and
19 TOMORROWNOW, INC.

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

22 SAN FRANCISCO DIVISION

23 ORACLE CORPORATION, et al.,

24 Plaintiffs,

25 v.

26 SAP AG, et al.,

27 Defendants.
28

Case No. 07-CV-1658 MJJ

**DEFENDANT SAP AG'S SECOND
AMENDED AND SUPPLEMENTAL
RESPONSE TO PLAINTIFFS' FIRST
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS
(SET ONE)**

1 **PROPOUNDING PARTY:** Plaintiffs Oracle Corporation, Oracle USA,
2 Inc., and Oracle International Corporation

3 **RESPONDING PARTY:** Defendant SAP AG

4 **SET NUMBER:** One

5 Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Local Rules of
6 the United States District Court for the Northern District of California, the standing and other
7 orders of this Court, and agreements of the parties defendant SAP AG amends and supplements
8 its responses as follows to the First Set of Requests for Production of Documents by plaintiffs
9 Oracle Corporation, Oracle USA, Inc. and Oracle International Corporation (collectively,
10 "plaintiffs" or "Oracle"):

11 **GENERAL RESPONSES AND OBJECTIONS**

12 1. SAP AG will produce documents and things within its possession, custody or
13 control that it is able to locate after a good faith search of files and other sources in which
14 responsive documents are likely to be found. SAP AG objects to any further search or production
15 as unduly burdensome and not reasonably calculated to lead to the discovery of admissible
16 evidence. A response by SAP AG indicating that it will produce documents is not a confirmation
17 that such documents exist or are in its possession, custody or control but, rather, indicates that
18 SAP AG will produce such documents if they do exist and are in its possession, custody or
19 control.

20 2. SAP AG will produce confidential and proprietary information of SAP AG and/or
21 of third parties that is in SAP AG's possession, pursuant to the protective order entered in this
22 case, including by designating certain documents CONFIDENTIAL INFORMATION or
23 HIGHLY CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY.

24 3. SAP AG objects to Oracle's instructions to the extent that they call for SAP AG to
25 produce documents in a form other than how they are maintained in the ordinary course of
26 business. SAP AG will produce relevant, responsive, non-privileged documents as typically
27 maintained, subject to the parties' agreement regarding mechanics of production set forth in the
28 Joint Case Management Conference Statement.

1 4. SAP AG objects to each request, definition and instruction to the extent they seek
2 to impose upon SAP AG's duties and/or responsibilities greater than those imposed by the
3 Federal Rules of Civil Procedure, the Local Rules of this Court, any applicable orders of this
4 Court, or any stipulation or agreement of the parties, or requires SAP AG to speculate or guess as
5 to whether Oracle will contend documents "contradict" (or similar terms) positions taken by SAP
6 AG.

7 5. SAP AG objects to each request to the extent it seeks the production of documents
8 and/or things that are not relevant to any claim or defense in this action, or reasonably likely to
9 lead to the discovery of admissible evidence that is relevant to any claim or defense, under Rule
10 26(b)(1) of the Federal Rules of Civil Procedure. More specifically, SAP AG objects to each
11 request as unduly burdensome, oppressive and calling for information that is neither relevant to
12 any issue in this action nor reasonably calculated to lead to the discovery of admissible evidence,
13 to the extent that the request seeks documents or information unrelated to PeopleSoft or J.D.
14 Edwards ("JDE") products as to which SAP AG's subsidiary TomorrowNow provided support to
15 customers, and will not produce such documents or information. The parties have agreed that
16 information or documents regarding Siebel products will not be provided in response to discovery
17 in this case.

18 6. SAP AG objects to each request to the extent that it seeks documents and
19 information concerning or to be provided by expert witnesses. SAP AG will provide such
20 documents and things according to the schedule established by the Court.

21 7. SAP AG objects to each request to the extent it seeks documents that are protected
22 from disclosure by any applicable privilege, including the attorney-client privilege, the attorney
23 work product doctrine, the privilege afforded non-testifying experts by Fed. R. Civ. P. 26(b), or
24 that is otherwise protected from disclosure under the Federal Rules of Civil Procedure, the
25 Federal Rules of Evidence, or relevant statutory or case law. Should any such production by SAP
26 AG occur, it is inadvertent and shall not constitute a waiver of any privilege or of any other
27 ground for objecting to discovery with respect to such documents or any other documents, or of
28 SAP AG's right to object during this litigation or otherwise to the use of any such document.

1 While the parties have reached agreement, as set forth in their Joint Case Management
2 Conference Statement, regarding the timing of production of privilege logs, they have not reached
3 complete agreement regarding the scope of post-litigation items to be identified on such logs.
4 SAP AG objects to identifying any privileged or work product documents written or prepared on
5 or after March 22, 2007, the date this action was filed. SAP AG will withhold all privileged and
6 work product documents created or prepared by any of its employees, attorneys, agents or
7 representatives on or after that date. SAP AG believes that the categorical identification of such
8 withheld documents satisfies any identification requirements predicate to a proper assertion of the
9 applicable privilege or immunity.

10 8. SAP AG objects to all requests seeking "all documents relating to" various topics
11 as rendering the requests in which that term is included overbroad and unduly burdensome and
12 leading to such requests to seek documents not reasonably calculated to lead to the discovery of
13 admissible evidence. SAP AG will produce documents constituting such materials or expressly
14 discussing the relevant topic.

15 9. SAP AG's responses to Oracle's requests do not constitute admissions or
16 acknowledgements that the information sought is within the proper scope of discovery or
17 admissible at trial or that any non-privileged documents responsive to a particular request may
18 exist.

19 10. SAP AG's responses to Oracle's requests are made without in any way waiving
20 (a) the right to object, on the grounds of competency, relevancy, materiality, privilege or
21 admissibility, as evidence for any purpose in any subsequent proceeding in, or the hearing of, this
22 action or any other action; and (b) the right to object on any grounds to other discovery requests
23 involving or relating to the subject matter of Oracle's requests.

24 11. SAP AG's discovery and investigation in connection with this case are continuing.
25 As a result, SAP AG's responses are limited to information obtained and reviewed to date, and
26 are given without prejudice to SAP AG's right to amend or supplement its responses after
27 considering information obtained or reviewed through further discovery or investigation.
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1 12. SAP AG objects to producing and will not produce documents and information
2 regarding customers as to which Oracle has refused to produce documents or information, as in
3 context such unilateral production would be unlikely to lead to the discovery of admissible
4 evidence relating to the issues Oracle has placed in dispute, and would also be unduly
5 burdensome and oppressive to SAP AG and not reasonably calculated to lead to the discovery of
6 admissible evidence.

7 13. SAP AG objects to each request to the extent it exceeds the 150 requests permitted
8 to Oracle by the Court's recent orders on case management.

9 **REQUESTS FOR PRODUCTION**
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2 **REQUEST FOR PRODUCTION NO. 60:**

3 All Documents that You may rely upon or introduce at trial in this litigation.

4 **RESPONSE TO REQUEST FOR PRODUCTION NO. 60:**

5 SAP AG objects to this request because it is a vague, unreasonably cumulative, overbroad,
6 unduly burdensome "catchall" request that is designed to improperly shift Oracle's discovery
7 burden to SAP AG.

8 **REQUEST FOR PRODUCTION NO. 61:**

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12 Dated: January 18, 2008

JONES DAY

13
14 By: 

Jason McDonell

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16 Counsel for Defendants
17 SAP AG, SAP AMERICA, INC., and
18 TOMORROWNOW, INC.
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PROOF OF SERVICE

I, Tonette M. Danowski, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 California Street, 26th Floor, San Francisco, California 94104. On January 18, 2008, I served a copy of the attached document(s):

**DEFENDANT SAP AG'S FIRST AMENDED AND SUPPLEMENTAL
RESPONSE TO PLAINTIFFS' FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS (SET ONE)**

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Christopher B. Hockett
Geoffrey M. Howard
Zachary J. Alinder
Bree Hahn
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
chris.hockett@bingham.com
geoff.howard@bingham.com
zachary.alinder@bingham.com
bree.hahn@bingham.com

Executed on January 18, 2008, at San Francisco, California.

By: 

TONETTE M. DANOWSKI